

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Dominic T. Henley,

Case No. 21-cv-1440 (WMW/HB)

Plaintiff,

v.

**ORDER ADOPTING REPORT AND
RECOMMENDATION AS MODIFIED**

Steve Kallis, Barb Von Blanokensee, and
Ian Connors,

Defendants.

Before the Court is United States Magistrate Judge Hildy Bowbeer's August 20, 2021 Report and Recommendation (R&R), which recommends that this Court dismiss with prejudice Plaintiff Dominic T. Henley's complaint alleging violations of his civil rights under 42 U.S.C. § 1983. For the reasons addressed below, the Court adopts the R&R as modified such that the dismissal is without prejudice.

Henley is incarcerated at the Federal Medical Center in Rochester, Minnesota (FMC-Rochester). Henley alleges that he is eligible for earned-time credits (ETCs) under the First Step Act, *see* 18 U.S.C. § 3632(d)(4), but that prison officials maintain that he is ineligible. After reviewing Henley's complaint, the magistrate judge determined that Henley's allegations were improperly raised because those claims must be advanced in a petition for a writ of habeas corpus rather than in a civil rights complaint. The magistrate judge provided Henley the opportunity to re-style his complaint as a habeas petition. Henley failed to do so. In the August 20, 2021 R&R, the magistrate judge recommends dismissing the action under 28 U.S.C. § 1915A for failing to state a claim for which this

Court may grant relief, reasoning that the action should be brought as a habeas petition. *See Preiser v. Rodriguez*, 411 U.S. 475, 490 (1973) (explaining that “Congress has determined that habeas corpus is the appropriate remedy for . . . prisoners attacking the validity of the fact or length of their confinement, and that specific determination must override the general terms of [Section] 1983”).

No objections to the R&R have been filed. In the absence of timely objections, this Court reviews an R&R for clear error. *See* Fed. R. Civ. P. 72(b); *Grinder v. Gammon*, 73 F.3d 793, 795 (8th Cir. 1996) (per curiam). Having reviewed the R&R, the Court finds no clear error and adopts the R&R as modified.¹

ORDER

Based on the foregoing analysis and all the files, records and proceedings herein,
IT IS HEREBY ORDERED:

1. The August 20, 2021 R&R, (Dkt. 9), is **ADOPTED AS MODIFIED**.
2. Plaintiff Dominic T. Henley’s complaint, (Dkt. 1), is **DISMISSED WITHOUT PREJUDICE**.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: October 15, 2021

s/Wilhelmina M. Wright
 Wilhelmina M. Wright
 United States District Judge

¹ The Court modifies the R&R to dismiss Henley’s complaint *without* prejudice so as to prevent Henley from incurring a strike under the Prison Litigation Reform Act. *See* 28 U.S.C. § 1915(g) (precludes a prisoner from proceeding in forma pauperis when that prisoner has, on three or more prior occasions, brought an action that was dismissed because it failed to state a claim upon which relief may be granted).